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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/798,711

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Robert W. Driscoll

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EXAMINER

DUFFY, DAVID W

ART UNIT

PAPER NUMBER

3714

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/798,711	<b>Applicant(s)</b> DRISCOLL ET AL.	
	<b>Examiner</b> DAVID DUFFY	<b>Art Unit</b> 3714	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 July 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 and 25-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 25-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Status of Claims***

1. This office action is in response to the amendment filed 07/13/2009 in which applicant amends claims 1, 6, 9 and 25-28. Claims 1-11 and 25-28 are pending.

### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/13/2009 has been entered.

### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-4, 6-11 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gabai et al. (US 6352478) in view of Rose; William J. (US 4857030 A).

5. In regard to claim 1, Gabai discloses a system that has a number of fanciful toy figures with wireless communication systems (48:30-37) where the toy figures include freely mobile characters and a portable owl doll for users to carry (49:6-15 and 49:19-28) where the mobile character transmits information identifying the character (48:66-49:5) and information is received by the other figures (50:47-49). Gabai further

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discloses providing the user with a second device for enabling the first device to identify and react to the user, the second device including a transmitter for transmitting a user identity signal to the first device (49:9-34, 51:1-14, and 52:37-65, where an id badge is worn and used to provide identification information such as a name to the dolls and characters of the park, of which the owl doll is one type). Gabai further discloses that the figures have the ability to direct users to facilities in the theme park (56:34-39 and 56:65-57:9) as well as to direct them to the location of other users in the park (53:27-54:14). Gabai lacks explicitly stating that the portable toy would be able to notify the user that a mobile character is nearby.

6. In related prior art, Rose discloses a device responsive to receipt of a signal transmitted by another to automatically notify the user via the device that a character is nearby (2:16-40). One skilled in the art would recognize the stated advantages of a doll with responsive speech to provide inspiration for a child's imagination and to maintain the child's interest in said doll (1:59-2:15). One of ordinary skill in the art would further recognize that any audio message could be used.

7. Therefore it would have been obvious to one skilled in the art at the time of the invention to have modified Gabai in view of Rose to have included a response to the signal of a nearby character in order to stimulate the child's imagination and maintain the child's interest in the doll.

8. In regard to claims 2 and 3, Gabai discloses the use of infrared or radio frequency signals (51:15-24).

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9. In regard to claim 4, Gabai discloses that each figure or node has an ID (figure 43A, element 2850).

10. In regard to claim 6, Gabai discloses a system with a number of wireless signal transmitters at various locations throughout a theme park environment (48:66-49:5), that has a number of fanciful toy figures with wireless communication systems (48:30-37) where the toy figures include freely mobile characters and a portable owl doll for users to carry (49:6-15 and 49:19-28) where the mobile character transmits information identifying the character (48:66-49:5) and information is received by the other figures (50:47-49). Gabai further discloses providing the user with a second device for enabling the first device to identify and react to the user, the second device including a transmitter for transmitting a user identity signal to the first device (49:9-34, 51:1-14, and 52:37-65, where an id badge is worn and used to provide identification information such as a name to the dolls and characters of the park, of which the owl doll is one type). Gabai further discloses that the figures have the ability to direct users to facilities in the theme park (56:34-39 and 56:65-57:9) as well as to direct them to the location of other users in the park (53:27-54:14). Gabai lacks explicitly stating that the portable toy would be able to notify the user that a mobile character is nearby.

11. In related prior art, Rose discloses a device responsive to receipt of a signal transmitted by another to automatically notify the user via the device that a character is nearby (2:16-40). One skilled in the art would recognize the stated advantages of a doll with responsive speech to provide inspiration for a child's imagination and to maintain

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the child's interest in said doll (1:59-2:15). One of ordinary skill in the art would also recognize that any audio message may be used.

12. Therefore it would have been obvious to one skilled in the art at the time of the invention to have modified Gabai in view of Rose to have included a response to the signal of a nearby character in order to stimulate the child's imagination and maintain the child's interest in the doll.

13. In regard to claims 7 and 8, Gabai discloses the use of infrared or radio frequency signals (51:15-24).

14. In regard to claim 9, Gabai discloses a system that has a number of fanciful toy figures with wireless communication systems (48:30-37) and memory (figures 71 and 74, element 4030 and 4270 respectively, which are related to figure 6 with description 35:31-32), where the figures are able to receive signals and trigger playback of preprogrammed data related to received signals (instructs the child to stay put in response to being informed that the parent is searching for the child, 53:27-54:14) where the toy figures include freely mobile characters and a portable owl doll for users to carry (49:6-15 and 49:19-28) where the mobile character transmits information identifying the character (48:66-49:5) and information is received by the other figures (50:47-49). Gabai further discloses providing the user with a second device for enabling the first device to identify and react to the user, the second device including a transmitter for transmitting a user identity signal to the first device (49:9-34, 51:1-14, and 52:37-65, where an id badge is worn and used to provide identification information such as a name to the dolls and characters of the park, of which the owl doll is one

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type). Gabai further discloses that the figures have the ability to direct users to facilities in the theme park (56:34-39 and 56:65-57:9) as well as to direct them to the location of other users in the park (53:27-54:14). Gabai lacks in explicitly stating that the portable toy would be able to notify the user that a mobile character is nearby.

15. In related prior art, Rose discloses a device responsive to receipt of a signal transmitted by another to automatically notify the user via the device that a character is nearby (2:16-40). One skilled in the art would recognize the stated advantages of a doll with responsive speech to provide inspiration for a child's imagination and to maintain the child's interest in said doll (1:59-2:15).

16. Therefore it would have been obvious to one skilled in the art at the time of the invention to have modified Gabai in view of Rose to have included a response to the signal of a nearby character in order to stimulate the child's imagination and maintain the child's interest in the doll.

17. In regard to claims 10 and 11, Gabai discloses the use of infrared or radio frequency signals (51:15-24).

18. In regard to claims 25-27, Gabai discloses that the toys may produce sound effects, music and speech (7:12-19 and 7:31-34).

19. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gabai et al. (US 6352478).

20. In regard to claim 28, Gabai discloses a method of conveying location of a toy character in an environment to a user carrying the toy character by providing in the environment one or more signal transmitters configured to transmit signals indicating

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location information (48:30-37 and 48:66-49:5); providing a toy character to the user where each toy has a signal receiver to receive the signal (fig 36 element 2180) a programmable memory configured to store software and preprogrammed data (figures 71 and 74, element 4030 and 4270 respectively, which are related to figure 6 with description 35:31-32) a processor that utilizes the software to interpret the signals and trigger playback of a data related to the signals received associated with a location within the environment (56:34-39 and 56:65-57:9); and distributing one or more characters to the persons in the persons within the environment (fig 81, element 5000). Gabai further discloses providing the user with a device for enabling the toy character to identify and react to the user, the device including a transmitter for transmitting a user identity signal to the toy character (49:9-34, 51:1-14, and 52:37-65, where an id badge is worn and used to provide identification information such as a name to the dolls and characters of the park, of which the owl doll is one type). Gabai does not explicitly disclose that the memory is located within the character. However, at the time of invention it would have been an obvious matter of design choice where to locate the memory within the system, be it within a character such as in the instant application or in a centralized location and transmitted to the device as in the system of Gabi. Each system produces the expected results of providing data to the interactive toy.

### ***Response to Arguments***

21. Applicant's arguments filed 07/13/2009 have been fully considered but they are not persuasive. Applicant argues that "Neither Gabai et al or Rose et al. teach providing the user with a separate, second device (e.g., a badge) for enabling the first device to



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identify and react to the user, the second device including a transmitter for transmitting an identity signal to the first device (e.g., the toy character doll).” Examiner respectfully disagrees. As detailed above, Gabai clearly teaches providing id badges to users so that the dolls and characters of the park may identify and address the patrons.

### ***Conclusion***

22. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID DUFFY whose telephone number is (571) 272-1574. The examiner can normally be reached on M-F 0830-1700.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. D./  
Examiner, Art Unit 3714

/Corbett Coburn/  
Primary Examiner  
AU 3714